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Sixty-third session

Summary record of the 18th meeting

Held at the Palais Wilson, Geneva, on Thursday, 22 March 2018, at 3 p.m.

Chair: Mr. Kedzia (Vice-Chair)

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The meeting was called to order at 3 p.m.

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Fourth periodic report of New Zealand (E/C.12/NZL/4 and E/C.12/NZL/QPR/4)

1. *At the invitation of the Chair, the delegation of New Zealand took places at the Committee table.*

2. **Mr. Little** (New Zealand), introducing his country's fourth periodic report (E/C.12/NZL/4), said that New Zealand was a diverse, multicultural Pacific nation that prided itself on promoting human rights and the equal treatment of all citizens. The relationship between the Government and Māori, the indigenous people of New Zealand, was a significant aspect of the nation's identity. The nation's founding document, the Treaty of Waitangi, signed in 1840, formed the basis of that relationship.

3. The Government was strongly committed to bringing about a significant and sustained reduction in child poverty. Under the Child Poverty Reduction Bill, steps would be taken to reduce child poverty and improve the well-being of the youngest citizens. Currently, between 150,000 and 210,000 children were living in poverty or hardship, with around 64,000 living in severe hardship. Plans were in place to establish robust measures to tackle child poverty and to require future governments to set targets relating to those measures. Every year, the Government would be required to report on progress against those targets and indicate how new spending initiatives would reduce child poverty.

4. In accordance with an ambitious plan to address the acute housing shortage in New Zealand, the Government had committed itself to building 100,000 new homes over 10 years, some 40 per cent of which would be affordable homes or social and emergency housing. In view of the fact that home ownership rates had fallen significantly since 1991, steps would be taken to protect the rights of tenants. Under new legislation on minimum housing standards, landlords would be required to ensure that rental properties were warm and dry so that the health risks associated with poor quality housing would be minimized.

5. In respect of further education, measures had been adopted so that, from the start of 2018, no fees would be payable for the first year of full-time courses at the tertiary level or the first two years of apprenticeships. From 2024, no fees would be payable for the first three years of study.

6. The Government was committed to building a high performing economy that delivered good jobs, decent working conditions and fair wages. A number of amendments had been made to employment legislation to enhance the protection afforded to workers, especially vulnerable workers. A second round of amendments would strengthen the role of collective bargaining in the workplace to ensure fair wages and conditions. A significant level of public funds would be invested in regional economies to promote job creation and private investment. Plans were in place to develop an employment programme aimed at young people in deprived areas.

7. The Government had committed itself to establishing a Royal Commission of Inquiry into the historical abuse of children and adults in State care. In accordance with the Commission's draft terms of reference, the inquiry would consider all forms of abuse experienced by children, young persons and adults in situations where the State was responsible for their care. The Royal Commission would undertake an independent public consultation in accordance with the draft terms of reference and then begin its substantive investigations.

8. **Ms. Bras Gomes** (Country Rapporteur), noting that the Covenant was not recognized or endorsed within the legal framework of the State party, said that draft legislation did not appear to be subject to sufficient scrutiny to ensure that it complied with international human rights obligations. She would be interested to hear how disclosure statements worked in practice, how many such statements had concerned Covenant rights and what rights those statements had addressed.

9. Given that the Bill of Rights was not comprehensive, which, in turn, meant that the Public Finance Act did not provide for the progressive realization of economic, social and cultural rights and the State party could not measure the achievement or otherwise of the Sustainable Development Goals, she asked whether the Government intended to incorporate economic, social and cultural rights into the Bill of Rights, to amend the Public Finance Act to take those rights into account and to develop a coherent strategy to ensure the realization of the Sustainable Development Goals.

10. Noting that the Government had failed to provide an adequate response to the recommendations made by the independent Constitutional Advisory Panel in relation to the strengthening of the Treaty of Waitangi within the State party's constitutional framework, she asked whether it would consider implementing a national strategy or action plan to bring its policy and legislation into line with the recommendations of the Advisory Panel and the United Nations Declaration on the Rights of the Indigenous Peoples and provide a formal and comprehensive response to the recommendations set out in the Waitangi Tribunal's landmark report.

11. She asked whether the State party's trade strategy complied with the recommendations made by the Waitangi Tribunal on ways of establishing meaningful engagement with Māori in relation to decisions concerning their lands, territories, waters and maritime areas. Noting that the Government did not always respect Māori claims to be the original owners of their lands, she asked for information on measures taken to ensure that the principle of free, prior and informed consent was implemented in a way that would be recognized by the indigenous peoples.

12. The Committee would welcome further information on measures taken to ensure that the United Nations Guiding Principles on Business and Human Rights were implemented in government procurement practices. She asked how effective the national contact point established under the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises had been and whether consideration was given to extraterritorial obligations in the area of business and human rights.

13. Noting that levels of domestic violence in the State party were among the highest in the world, she asked whether the Government would consider implementing a long-term, coherent and cross-cutting strategy aimed at preventing domestic violence and protecting and rehabilitating victims. It would also be interesting to learn what measures were being taken to investigate the abuse of children in State care, the majority of whom were Māori children or children with disabilities.

14. The Committee would welcome the delegation's comments on the view that discrimination could be defined as a pattern of behaviour that disadvantaged Māori while benefiting others and that prejudice directed at Māori currently stemmed more from unconscious bias than from institutional racism.

15. Lastly, she asked what steps were being taken to increase the number of women in senior roles in private companies and on the boards of such companies.

The meeting was suspended at 3.35 p.m. and resumed at 3.45 p.m.

16. **Mr. Little** (New Zealand) said that the Government had no plans to change the substantive rights enshrined in the New Zealand Bill of Rights Act. When new legislation was being considered, disclosure statements and certificates were issued that indicated whether or not that legislation was consistent with the Bill of Rights and the Government's international obligations. Such statements and certificates were issued at the outset of a bill's journey through the legislative process so that, by the time it was subjected to detailed examination, the members of Parliament responsible for examining it were well aware of any possible inconsistencies that it might contain.

17. Plans were in place to empower the courts to declare legislation to be inconsistent with the Bill of Rights and to require Parliament to respond to any such declaration of inconsistency by either endorsing the legislation as it stood, considering amendments to it or repealing it. Legislation entering Parliament for the first time was often accompanied by comments relating to specific international obligations that the Government had assumed,

including the Covenant. The Government had undertaken to ensure that its economic policies were consistent with a well-being framework that the Treasury and other agencies were in the process of developing.

18. Cross-government efforts would need to be made in order for the Sustainable Development Goals to be achieved. To that end, an inter-agency process had been initiated to consider how the Goals applied to New Zealand and how they could be achieved.

19. In considering any possible constitutional reform involving the Treaty of Waitangi, it was necessary to bear in mind that, in the view of many Māori leaders, the value of the Treaty lay in the fact that it had arisen from the direct historical relationship established between the Crown and the Māori. Great importance was attached to the fact that the Treaty had been established with the Crown and not with any particular government.

20. Steps were being taken to ensure that the Government could fulfil its obligations under the United Nations Declaration on the Rights of Indigenous Peoples. In that regard, the Government had appointed a Minister of Crown/Māori Relations who was consulting with both Māori and Pākehā — New Zealanders of European descent — on ways of ensuring that State decision-making took the views of all citizens into account.

21. The Government was confident that the rights of Māori established under the Treaty of Waitangi were sufficiently protected under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. When the Government entered into trade agreements, it undertook consultations with relevant stakeholders, including those representing the interests of Māori. In addition, all trade agreements were subjected to parliamentary scrutiny, including a select-committee process through which members of the public and organizations could submit their views on the prospective agreement.

22. The area of land known as the Pekapeka Block had been the subject of negotiations over a possible settlement in favour of the *iwi* (tribal group) that had claims to it. The land had been offered to the *iwi* but, during the course of the negotiations, they had decided to accept financial compensation rather than take ownership of it. Plans were currently in place to enable residents to purchase leasehold land within the Block and to allocate the proceeds to measures intended to protect the land rights of the tribal group in question. The Waitara Lands Bill, which concerned the Pekapeka Block, had not completed its passage through Parliament because the Government and the local councils involved had stipulated that the legislation could not proceed unless all relevant stakeholders were satisfied with it.

23. The Government was working with the private sector to raise awareness of the fact that some suppliers engaged in labour exploitation or slave labour. By 2015, the national contact point established in the context of the OECD Guidelines for Multinational Enterprises had received 11 referrals in respect of human rights abuses.

24. The Government had appointed an undersecretary responsible for tackling family and domestic violence who was putting together a coherent and coordinated plan to address that issue. A cross-cutting strategy was also being developed. All the political parties represented in Parliament were committed to reducing domestic violence. The Government was working on a cross-party basis to ensure that any solutions adopted in that regard would remain in place across changes of government. The abuse of children in State care was being addressed by an inquiry set up to be as comprehensive as possible.

25. Regarding institutional racism, the Government planned to take steps to address the overrepresentation of Māori in the corrections system and was implementing measures to improve educational achievement among Māori and Pasifika students, ensuring that all young people had the opportunity to be taught in a way that was relevant to them and that allowed them to succeed.

26. The Government was working with civil society organizations to develop programmes to encourage the appointment of women to company boards and it aimed to set an example for the private sector in that regard. About 38 per cent of parliamentarians and a similar proportion of Cabinet ministers were women.

27. **Ms. Shin** (Country Task Force) said that the Committee had received information that the national contact point for the OECD Guidelines for Multinational Enterprises was

just one person. Did the Government plan to strengthen that system and to improve the dissemination of information related to complaints?

28. Recalling that New Zealand had a proud history as a pioneer of women's rights, having been the first country to grant all adult women the vote, she said that the Government should do more than merely set an example to the private sector. For instance, would it be willing to adopt special measures or legislation requiring that company boards should have a quota for women? In the same vein, she was concerned that there was an unconscious bias against women that led to a "motherhood penalty", whereby women were paid less because they had interrupted their careers to have children. How did the Government plan to increase the social recognition of women's role in development and promote the need for shared responsibility between men and women?

29. **Mr. Sadi** (Country Task Force) said that, while he was impressed by the high level of gender parity in Parliament, he wished to know how many members of Parliament were from Māori and Pasifika communities. What measures were being taken to combat unconscious bias, which seemed to be deep-rooted in New Zealand society?

30. **Ms. Liebenberg** said that the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions had recommended that the State party's Human Rights Commission should have an open, publicized written procedure for the selection of commissioners. She would be grateful if the delegation could explain the current procedure and indicate whether the Government planned to take steps in line with that recommendation. Given that climate change would have a severe impact on economic, social and cultural rights and would affect vulnerable populations disproportionately, she would also be interested to hear what participation mechanisms the State had established with Māori in relation to climate change adaptation and mitigation strategies.

31. **Mr. Kerdoun** (Country Task Force) said that, although women's representation was important, the figures provided by the State party referred to parity — which could be achieved by requiring public institutions and political parties to appoint more women — rather than equality. He was interested to know how the Government guaranteed equality in the law, so that women had equal rights and equal pay. He would be grateful for information on the proportion of Māori employed in public institutions and companies.

32. **Mr. Chen** said that he was concerned that the Bill of Rights Act and the Human Rights Act did not confer equal importance upon economic, social and cultural rights, on the one hand, and civil and political rights, on the other. Did the Government have a national action plan, in keeping with the recommendations of the Vienna Declaration and Programme of Action, to ensure that it gave more equal attention to the two sets of rights?

33. **Ms. Ohia** (New Zealand) said that the national contact point for the OECD Guidelines was located within the Ministry of Business, Innovation and Employment. A mechanism had been established for the treatment of complaints referred to it, whereby the Ministry was required to investigate claims, identify substantive issues and, if necessary, facilitate dialogue and seek resolution through mediation. The national contact point did not determine whether breaches of the Guidelines had occurred, nor did it adjudicate disputes; however, in the interest of transparency, it issued final statements on the outcomes of complaints, which were reported annually to the OECD Investment Committee. While the number of complaints had increased in recent years, not all of them met the eligibility criteria for referral to the mechanism. The Ministry would keep the resourcing of the national contact point under consideration and would allocate additional resources as required.

34. **Mr. Little** (New Zealand) said that the Government was aware that women who interrupted their careers to start a family were at a disadvantage and it was working with the private sector to develop solutions to the problem. The Parental Leave and Employment Protection Act contained provisions on keeping employees' positions open during periods of parental leave.

35. The number of Māori in Parliament and in the Cabinet had increased significantly at the previous general election, with the result that 29 out of 120 seats in Parliament were now held by Māori representatives. To address unconscious bias, the Government funded

Māori television and radio broadcasters and implemented an active programme to sustain the Māori language and support festivals and celebrations of Māori culture. Many private organizations incorporated Māori cultural elements into their business practices.

36. The process of appointing commissioners to the Human Rights Commission, although not subject to statutory provision, was open and transparent: positions were advertised, the candidates were considered and a recommendation was made to the Minister of Justice, who in turn made a recommendation to the Governor-General. There were clear and narrow grounds for the removal of commissioners, who were rarely removed before the expiry of their term. Commissioners were fully independent and were duty-bound to act impartially in respect of any measures proposed by the Government.

37. The newly elected administration was keenly focused on climate change mitigation and adaptation strategies; it had appointed a Minister for Climate Change and was considering the establishment of a climate change commission to provide independent policy advice to help New Zealand achieve its goals under the Paris Agreement. Mindful that many neighbouring countries were small island developing States and highly vulnerable to climate change, the Government was working with those countries to develop their capacity to respond. New Zealand already hosted large communities of Pacific islanders and the Government recognized that it might, in the future, have to consider taking in climate-change refugees from the Pacific.

38. Concerning the legal framework for women's equality, although the Government had not passed any legislation on gender ratios for company boards, there were other legislative provisions designed to improve women's labour participation, including on pay equity. The first case brought in the 40 years since the adoption of equal pay legislation had recently reached the courts, with the result that the Government had agreed to a 2 billion New Zealand dollars ($NZ) settlement, meaning that aged and residential care workers, many of whom were women, would receive a rate of pay comparable to other workers with similar skills. The Government would continue to strive to increase women's representation in public-sector employment and would encourage the private sector to follow suit.

39. New Zealand had a human rights national plan of action, developed by the Human Rights Commission, consisting in an online tool that allowed the public to monitor progress against the recommendations received and accepted during the universal periodic review. The website hosting the tool had received 16,000 hits in 2017.

40. **Mr. Kerdoun**, noting that the New Zealand education system was considered to be one of the best in the world and that Māori could be educated in their own language at preschool and in primary school, said that the Committee had nevertheless received reports that only 4 per cent of teachers were capable of teaching in Māori, which severely limited access to education in the language. Furthermore, Māori students remained significantly less likely than New Zealanders of European descent to obtain secondary education certificates. Accordingly, he wished to know how the Government intended to ensure access to education in the Māori language and to close the gap in educational achievement. Were school programmes developed in consultation with Māori and adapted to their culture and needs? He would be grateful for information on the Education Act 1989, in particular as to whether it was outdated, and on any planned or existing Government policies for the realization of the economic, social and cultural rights of marginalized and disadvantaged individuals and groups.

41. The Committee was concerned at reports that a large number of children with special needs, including children with disabilities, seemed to be excluded from the school system; it would therefore welcome clarification on the situation and the steps that were envisaged to prevent the exclusion of children with special needs. The Committee had also been informed that about 20 per cent of young people left school with low levels of education. Was that figure correct and how might the problem be remedied? The delegation might also provide information on the Government's response to physical and psychological bullying in schools, including bullying via social media. Was it true that New Zealand had a law that allowed children to leave school in order to enter employment, and if so, what was the legal minimum age for them to do so?

42. In respect of migrants and refugees, he understood that Australia and New Zealand had a high standard of living that attracted people from overseas; in that context, he wondered whether there was any truth to reports of foreigners entering New Zealand on tourist visas for the purpose of enrolling their children in school. The Committee would also appreciate clarification of whether children residing illegally in the country had the right to free education. If not, what course of action did the State party pursue when the family was unable to afford the school fees?

43. **Mr. Little** (New Zealand) said that the lack of teachers fluent in the Māori language meant that it would be some time before Māori became available to all students in the school system, as the Government intended. Teacher recruitment and retention was a problem in a number of disciplines and was not confined to the teaching of, or teaching in, Māori. Scholarships had been introduced to encourage Māori speakers to enter the teaching profession. With regard to the gap in educational achievement, the Ministry of Education implemented various programmes to promote excellence and to foster relationships with *iwi*, while the Māori Education Strategy Ka Hikitia recognized Māori aspirations and the importance of Māori identity as the basis for learning and for achieving success. The Education Act 1989 had been frequently amended and updated so that it was now very different to the Act as originally adopted. The Government had recently announced a review of all levels of education and of educational standards to ensure that the system was fit for the twenty-first century.

44. The new administration had committed itself to retaining residential special education facilities for children with the greatest need, thereby averting the threat of closure that such facilities had been under. The Government accepted the need to improve its record on special education and planned to examine the requirements of special needs students in the framework of its ongoing education review.

45. The Government acknowledged that 20 per cent of students left school without a qualification and was determined to reduce that number. Moreover, it recognized that functionally illiterate and innumerate school leavers were at greater risk of coming into conflict with the criminal justice system: educational achievement for all students was therefore the best outcome for the whole of society. The minimum age at which children were permitted to leave school to enter employment was 16 years, although some school-age children engaged in work outside of school hours, presenting the challenge of ensuring that work did not compromise their educational achievement.

46. As in many countries, bullying and online bullying was a concern and criminal laws were in place to deal with inappropriate conduct online and on social media. The Ministry of Education had adopted programmes aimed at creating a culture in which bullying was not tolerated and worked with schools to implement restorative justice measures with the participation of perpetrators and victims.

47. The Government encouraged young people from overseas to study in New Zealand and took steps to ensure that they were not subjected to exploitation. All school-age children in New Zealand were legally required to be in school, regardless of their parents' or guardians' immigration status. Despite the statutory commitment to free education, some State schools levied charges on non-resident students; however, the Government was considering the introduction of a scheme to top up the funding of State schools so that they would not have to charge such fees. The Government's refugee integration process aimed to ensure that children attended school and received assistance with language learning, which in turn helped their parents to learn the language and become fully integrated into society.

48. **Mr. Kerdoun** said that he wished to know whether there was any de facto segregation in schools between Māori and New Zealanders of European descent, given that many Māori lived in separate communities. He would appreciate information on any measures taken to avoid segregation, which could have harmful consequences for society as a whole. Regarding higher education, he asked whether it was true that over 40 per cent of students did not complete their first degree, and requested further information on the subject. He would also appreciate statistics on the school dropout rate, which appeared to

be high, and asked whether the rate indicated problems in the education system. He wished to know what the Government's future priorities were for education.

49. **Mr. Sadi** said that he would like to know whether science and other subjects were taught in the Māori language. Noting that there was a significant housing shortage in New Zealand, he asked whether there was a link between housing issues and the high rate of school dropouts.

50. **Ms. Bras Gomes** said that she would like to hear what the impact of the Māori Education Strategy Ka Hikitia had been. She asked how the Government was intending to amend its current strategy to close the achievement gap between Māori pupils and those of other ethnicities. She also wished to know how many Māori families received government subsidies for early childhood education, and whether access to that education had made primary education easier for Māori children.

51. Regarding inclusive education, she asked how the Government addressed the discrepancy between the Education Act, which provided for free, universal primary education, and the Human Rights Act, which stipulated that persons with disabilities could be denied access to educational establishments when a special service or facility was required and could not reasonably be made available, and when there was a risk of harm to the person with disabilities or others.

52. **Mr. Little** (New Zealand) said that, although there was a higher than average number of Māori pupils in some urban schools, the education system could not be described as segregated. In general, Māori children were well integrated. Schools in provincial areas tended to reflect the local population, and the risk of either informal or self-imposed segregation was very low. Schools in Auckland, in particular, often had pupils from a wide range of ethnic backgrounds.

53. The Government's future priorities in education would be determined by the outcome of a review of the National Standards system, which measured school performance. It was necessary to have a system that informed parents of their child's progress and ensured that children's education was tailored to their progress. As to whether 40 per cent of students did not complete their first degree, the claim would be checked and the correct figure communicated to the Committee later. It was true that housing insecurity affected the school dropout rate, as some children were forced to change schools several times a year and were therefore often ill prepared for their academic commitments. In some schools, the pupil turnover rate could reach 40 per cent in a single year. The Government's priority was to address the housing crisis in order to provide families with stability and security.

54. To improve educational achievement and accelerate the reduction in the achievement gap, the socioeconomic circumstances of Māori had to be addressed, including the continuing impact of colonization and historical abuses of Māori. The Treaty settlement process was vital in that regard. The rate of Māori children in early childhood education was 95.2 per cent, which was 5.6 per cent higher than in 2010. The Māori language could be and was used to teach all subjects, including science, by teachers able to speak it fluently. The achievement of children learning in Māori-language schools was on a par with pupils throughout the school system, although further work was needed to improve attainment.

55. Regarding the conflicting provisions of the Education Act and the Human Rights Act, the Government was committed to providing education for all school-age children and recognized that the needs of children with disabilities had not always been met. It aimed to ensure that the education system was accessible to all.

The meeting was suspended at 5.30 p.m. and resumed at 5.40 p.m.

56. **Ms. Shin** said that it appeared that women, Māori, Pasifika, young people and persons with disabilities were more likely than others to experience unemployment or underemployment, and the possibility of intersectional discrimination among those groups remained a concern. She would appreciate further information on the new Government's measures to improve employment, particularly among those groups, and on how the Government would ensure the success of those measures.

57. As the country had ratified the Convention on the Rights of Persons with Disabilities, she wished to know whether reasonable accommodation was included in legislation relating to persons with disabilities, as it did not appear in the national definition of discrimination. Did the Government use the social model or the medical model to identify disabilities, were persons with disabilities able to access all of the services they needed, including transportation, and did the Government plan to begin collecting regular data on the employment of persons with disabilities?

58. Regarding just and favourable conditions of work, she wished to know how the implementation of new initiatives prohibiting abusive business practices was ensured and monitored. She asked whether the new Government planned to repeal minimum wage exemption permits for persons with disabilities and, if so, how businesses would be encouraged to employ persons with disabilities. Were there any existing subsidies or incentives in that regard?

59. Noting that a number of people had been killed or injured in the workplace in recent years, largely in sectors such as agriculture, fishing and construction, in which many Māori and Pasifika were employed, she asked whether the new Government was planning to introduce measures to address workplace safety. She also wished to hear how it planned to reduce or eliminate gender segregation in the workplace and enforce the principle of equal pay for equal work. She would like to know whether the 90-day trial period for new employees had been abolished completely, or if it was still used in companies with under 20 employees.

60. Under recent legislative reforms, the collective bargaining power of trade unions had been weakened and employers had been given greater flexibility. Were there plans to introduce measures to ensure parity between employers and employees? Furthermore, the country had issued a reservation in respect of article 8 of the Covenant on the grounds that it was not compatible with effective trade union representation and orderly industrial relations. She would appreciate further information on the trade union situation in the country and on any plans to withdraw the reservation.

61. She would like to hear whether the new Government was planning to review the current social security system, for example to allocate benefits on the basis of individual needs, and whether it would consult the people affected by social services and benefits. She also wished to know why the contracts for social services provided by Māori were reviewed annually, while other equivalent contracts were reviewed at five-year intervals. Where there plans to revise that requirement?

62. As there was no evidence that imposing benefit-related sanctions encouraged unemployed persons to find work, she asked whether such sanctions were still applied. The Committee had been told that it was possible for the Government's online system for reporting benefit fraud to be used for malicious purposes; that issue should therefore be addressed.

The meeting rose at 6 p.m.